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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

CENTOCOR ORTHO BIOTECH,)
INC.,)
)
Plaintiff,)
)
v.)
)
GENENTECH, INC. and CITY OF)
HOPE,)
)
Defendants.)

Case No. CV 08-03573 MRP (CTx)
The Honorable Mariana R. Pfaelzer

**STIPULATED PROTECTIVE
ORDER**

STIPULATED PROTECTIVE ORDER

Whereas Plaintiff Centocor Ortho Biotech, Inc. and Third-Party Defendants Global Pharmaceutical Supply Group, LLC, Centocor Biologics, LLC, and JOM Pharmaceutical Services, Inc. (collectively, “Centocor”) and Defendants Genentech, Inc. (“Genentech”) and City of Hope (collectively, “parties”) -- parties to the action entitled *Centocor v. Genentech, et al.*, Case No. CV08-03573 (the “Action”) -- each believe that certain information that is or will be encompassed by discovery demands made by one upon the other, or by a party upon a non-party, constitutes confidential and proprietary commercial, technical, development, or business information, research, and/or trade secrets, within the meaning of Federal Rule of Civil Procedure (“Rule”) 26(c); whereas each of the parties believes that it would serve its interests to conduct discovery and proceedings herein under a protective order pursuant to that rule; and whereas each of the parties has made a showing, as set forth in the “Good Cause Statement” below, that “good cause” exists to believe that public disclosure and/or unfettered disclosure of such information to other parties will result in prejudice or competitive harm, the parties have stipulated to provide access to and accept such information, documents and things, subject to certain protective provisions hereinafter set forth.

IT IS HEREBY ORDERED as follows:

1. This Protective Order shall apply to all information, documents and other items subject to discovery in this Action, including without limitation testimony adduced at depositions upon oral examination or upon written questions pursuant to Rules 30 and 31, answers to interrogatories pursuant to Rule 33, documents produced pursuant to Rule 34, information obtained from inspection of premises or things pursuant to Rule 34, answers to requests for admission pursuant to Rule 36, and documents, things, or testimony obtained from non-parties pursuant to Rule 45, and regardless of whether the material is filed with the Court.

2. As used in this order, “Confidential Material” shall mean documents,

1 or any portion thereof, and other forms of evidence, information, or discovery
 2 contemplated under Rules 26 through 36 and 45 that, in the good faith and
 3 reasonable opinion of the party or non-party producing the discovery (hereinafter
 4 “Producing Party”), contains sensitive technical or business information whose
 5 public disclosure poses a meaningful risk of competitive, business, or other harm
 6 to the Producing Party, as identified below.

7 **GOOD CAUSE STATEMENT**

8 It is the intent of the parties and the Court that materials will not be
 9 designated “Confidential” for tactical reasons in this case and that nothing be so
 10 designated without a good faith and reasonable belief that there is good cause why
 11 it should not be part of the public record of this case.

12 Categories of “Confidential” documents, information, or other discovery that
 13 the parties may seek to designate under this Protective Order include the following:

- 14 (a) Information that is the subject of a non-disclosure or confidentiality
 15 agreement or obligation. Good cause exists for protected or restricted
 16 disclosure of such information because public disclosure may result in
 17 the violation of such agreement or obligation;
- 18 (b) The names or other information tending to reveal the identities of a
 19 party’s supplier. Good cause exists for protected or restricted
 20 disclosure because such information is frequently kept nonpublic as a
 21 matter of practice to protect highly-sensitive business and proprietary
 22 information, the public disclosure of which would pose a meaningful
 23 risk of competitive and business harm;
- 24 (c) The names or other information tending to reveal the identities of a
 25 party’s distributors. Good cause exists for protected or restricted
 26 disclosure because such information is frequently kept nonpublic as a
 27 matter of practice to protect highly-sensitive business and proprietary
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1 information, the public disclosure of which would pose a meaningful
2 risk of competitive and business harm.

- 3 (d) The names or other information tending to reveal the identities of a
4 party's potential or actual customers, or tending to reveal potential or
5 actual customer needs, specifications, and requests. Good cause
6 exists for protected or restricted disclosure because such information
7 is frequently kept nonpublic as a matter of practice to protect highly-
8 sensitive business and propriety information, the public disclosure of
9 which would pose a meaningful risk of competitive and business
10 harm.
- 11 (e) Research and development data, reports, and information (to the
12 extent not previously publicly disclosed). Good cause exists for
13 protected or restricted disclosure because the parties' research and
14 development efforts are routinely kept nonpublic as a matter of
15 practice to protect highly-sensitive technical and proprietary data and
16 information, the public disclosure of which would pose a meaningful
17 risk of competitive and business harm.
- 18 (f) Information on efforts taken to obtain regulatory approval for
19 products or processes (to the extent not previously publicly disclosed).
20 Good cause exists for protected or restricted disclosure because such
21 efforts are routinely kept nonpublic as a matter of practice to protect
22 highly-sensitive technical, business, and proprietary data and
23 information, the public disclosure of which would pose a meaningful
24 risk of competitive and business harm.
- 25 (g) Proprietary technical information, including product designs, product
26 specifications, information on specific manufacturing processes,
27 techniques, and systems; laboratory notebooks; technical reports and
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1 memoranda; technical specifications; technical drawings; and test
2 data. Good cause exists for protected or restricted disclosure because
3 such information is routinely kept nonpublic as a matter of practice to
4 protect highly-sensitive technical, business, and proprietary data and
5 information, the public disclosure of which would pose a meaningful
6 risk of competitive and business harm.

- 7 (h) Information tending to reveal corporate organization and
8 relationships, structure, strategies, and planning (to the extent not
9 previously publicly disclosed), including corporate meeting minutes,
10 agendas, correspondence, or summaries. Good cause exists for
11 protected or restricted disclosure of at least some such information
12 that is routinely kept nonpublic as a matter of practice to protect
13 highly-sensitive business and proprietary data and information, the
14 public disclosure of which would pose a meaningful risk of
15 competitive and business harm.
- 16 (i) Information relating to actual or potential efforts or strategies to
17 acquire or evaluate patents or other intellectual property or
18 technology, including pending and draft patent applications; patent,
19 prior art, or other intellectual property searches or evaluations;
20 opinions of counsel; actual or potential licensing of intellectual
21 property or technology; and licensing policies, practices, or strategies.
22 Good cause exists for protected or restricted disclosure because such
23 information is routinely kept nonpublic as a matter of practice to
24 protect highly-sensitive business, technical, and proprietary data and
25 information, the public disclosure of which would pose a meaningful
26 risk of competitive and business harm.
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1 (j) Financial information, including information as to specific budgets,
2 revenues, costs, profits, margins, pricing, sales revenues and unit
3 volumes, and royalty payments (to the extent not previously publicly
4 disclosed). Good cause exists for protected or restricted disclosure
5 because such information is routinely kept nonpublic as a matter of
6 practice to protect highly-sensitive financial, business and proprietary
7 data and information, the public disclosure of which would pose a
8 meaningful risk of competitive and business harm.

9 (k) Information tending to reveal market analyses, business or marketing
10 plans, market projections or forecasts, and strategies for marketing,
11 selling, or pricing (to the extent not previously publicly disclosed).
12 Good cause exists for protected or restricted disclosure because such
13 information is routinely kept nonpublic as a matter of practice to
14 protect highly-sensitive business and proprietary data and information,
15 the public disclosure of which would pose a meaningful risk of
16 competitive and business harm.

17 3. As used in this order, “document” shall have the meaning ascribed to
18 it in Rule 34(a).

19 4. Any document, or portion thereof, and any other form of evidence or
20 discovery contemplated under Rules 26 through 36 and 45 that, in the good faith
21 and reasonable opinion of the Producing Party, contains Confidential Material may
22 be designated by the Producing Party as “Confidential.” Confidential Material,
23 designated as such in accordance with this Order, shall be disclosed or made
24 available only to persons specified in Paragraphs 7 and 8 herein, and is not to be
25 copied or used except for the limited purpose of conducting this litigation,
26 including preparing exhibits for affidavits, depositions, hearings, or for trial. All
27 copies of material properly designated as “Confidential,” and all extracts, abstracts,
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1 charts, summaries, and notes made from material designated as “Confidential,”
2 shall be Confidential Material.

3 5. All documents produced herein by each party shall bear identifying
4 numbers at the time a copy is given to the party receiving the discovery responses
5 (hereinafter “the Receiving Party”). In the case of material or information
6 disclosed in a non-paper medium (e.g., slides, computer disks, audiotape), the
7 identifying number may be affixed on the outside of the medium or any container.

8 6. Confidential Material may be made subject to the Protective Order as
9 follows:

10 (a) With respect to documents or copies provided by the Producing
11 Party to the Receiving Party, by marking the initial page and the page
12 or pages on which any Confidential Material appears with the legend
13 “CONFIDENTIAL.” The Producing Party shall so mark documents
14 or copies prior to or at the time of supplying them to the other party.

15 (b) With respect to documents or copies produced by the Producing
16 Party for inspection by opposing counsel, such documents are deemed
17 to be, and shall be treated as, Confidential Material, whether or not so
18 marked, unless and until opposing counsel requests copies of such
19 documents and the Producing Party supplies such copies to opposing
20 counsel. Copies of such documents supplied to opposing counsel
21 shall be made subject to this Order if, prior to or at the time of
22 supplying them to opposing counsel, the Producing Party marks such
23 copies as “CONFIDENTIAL,” as provided in Paragraph 7(a) above.

24 (c) In the case of depositions, a deposition transcript or a portion
25 thereof may be designated as Confidential by so designating on the
26 record at the deposition and shall remain Confidential without further
27 action of the designating party. Alternatively, a deposition transcript
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1 or a portion thereof may be designated as “Confidential” within thirty
2 (30) calendar days following the mailing of the transcript or videotape
3 by the court reporter or videographer. Such notice thereof shall be
4 made in writing to the reporter, with copies to all other counsel,
5 designating the portions of the transcript that contain Confidential
6 Materials as Confidential and directing the reporter to mark that
7 portion of the transcript accordingly. Each party shall attach a copy
8 of such written statement to the face of the transcript and each copy
9 thereof in its possession, custody or control. If no confidentiality
10 designation is made at the time of a deposition, such deposition
11 nonetheless shall be treated as Confidential from the taking of the
12 deposition until thirty (30) calendar days after being notified by the
13 court reporter or any party that the transcript is available. The portion
14 of any videotape of a deposition corresponding to the portion of any
15 transcript of that deposition designated as Confidential also shall be
16 treated as Confidential under this Protective Order to the same extent
17 as the transcript.

18 (d) In the case of responses to interrogatories or other discovery
19 requests, or responses, affidavits, briefs, memoranda or other papers
20 filed with the Court, information contained therein may be designated
21 as Confidential Material by prominently marking the cover of such
22 paper “CONFIDENTIAL.” For interrogatory responses and
23 documents filed with the Court, if only a portion of the document
24 contains Confidential Material, then the information shall be
25 designated as such by marking only that portion “CONFIDENTIAL.”
26 Such identification shall be made prior to or at the time the documents
27 are filed with the Court or served on another party.
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1 (e) In the case of Confidential Material that is disclosed in a non-
2 paper medium (e.g., slides, computer disks, audiotape), the notation
3 “CONFIDENTIAL” shall be affixed on the outside of the medium or
4 any container.

5 (f) To the extent that information has been produced in this case
6 prior to the entry of this Order that a Producing Party desires to
7 designate as Confidential, the Producing Party may, within twenty
8 (20) calendar days of the entry of this Order, designate by identifying
9 in writing to the Receiving Party which such documents, testimony or
10 tangible objects should be treated as Confidential.

11 7. (a) Confidential Material, and any analysis or report containing
12 Confidential Material, shall not be made public by the Receiving Party nor used for
13 any purpose other than this Action, and, except as provided in Paragraph 8, shall
14 not be divulged to anyone other than persons described in Paragraph 7(a)(i)-(viii)
15 and Paragraph 7(b) below, subject to any restrictions set forth in Paragraphs
16 7(a)(i)-(viii) and Paragraph 7(b) as to those persons:

17 (i) Any independent experts or consultants who are not regularly
18 employed by or associated with the Receiving Party (and personnel
19 acting under their direct or indirect supervision) and whose advice and
20 consultations are being used or will be used by the Receiving Party in
21 connection with preparation for trial or other evidentiary hearing in
22 this Action; provided, however, that:

23 (1) the name, business address, and current employment (if
24 any) of any such expert or consultant, and a signed undertaking
25 to be bound by the terms of this Order in the form of Exhibit A
26 hereto, shall be furnished to counsel for the Producing Party, by
27 electronic mail or overnight courier, at least ten (10) business
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1 days prior to the first disclosure of Confidential Material to that
2 expert or consultant;

3 (2) The Producing Party may then make a written objection
4 setting forth with particularity the reasons for objecting to the
5 disclosure. If no such objection is served, Confidential Material
6 may be disclosed to the independent expert or counsel at the
7 conclusion of the ten (10) business day period;

8 (3) If such written objection is served within the ten (10)
9 business day period, the Receiving Party shall not proceed with
10 disclosure to the identified expert or consultant and the
11 Producing and Receiving Party shall confer within five (5)
12 business days following service of the written objection. If
13 agreement cannot be reached with respect to disclosure of
14 Confidential Material to the independent expert or consultant,
15 the Producing Party may move this Court in compliance with
16 Local Rule 37 for a motion to preclude disclosure to the
17 independent expert or consultant of the Producing Party's
18 Confidential Material. In such case, no disclosure shall be
19 made to the expert or consultant until the Court has ruled on the
20 motion. If the Producing Party does not serve its moving
21 papers within ten (10) business days following the conference
22 with the Receiving Party, the Producing Party's objection shall
23 be deemed waived. It is not the intent of this subparagraph to
24 assign the burden of persuasion on such motion to either the
25 Producing Party or to Receiving Party;
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1 (ii) The parties' outside counsel and personnel of outside counsel in
2 this Action, including specifically the following outside counsel set
3 forth below and their personnel:

4 Attorneys for CENTOCOR
5 WOODCOCK WASHBURN LLP
6 CONNOLLY BOVE LODGE & HUTZ LLP

7 Attorneys for GENENTECH
8 KIRKLAND & ELLIS LLP
9 DURIE TANGRI LEMLEY ROBERTS & KENT LLP
10

11 Attorneys for CITY OF HOPE
12 IRELL & MANELLA LLP

13 (iii) Personnel of the Court and all appellate courts for this Action,
14 and court reporters and/or videographers and necessary support
15 personnel of such court reporters and/or videographers retained in
16 connection with any hearing or trial of this Action or in connection
17 with any depositions taken by any party in this litigation to the extent
18 necessary to transcribe and/or record the deposition testimony and
19 identify exhibits marked in the course of the deposition;

20 (iv) Jury consultants, mock jurors, focus group members, or
21 research group participants selected by jury consultants or by trial
22 counsel in preparation for trial, provided that such persons agree to be
23 bound by the terms of this Order and do not retain any Confidential
24 Material;

25 (v) Independent litigation support vendors, including legal
26 interpreters, document reproduction services, computer imaging
27 services, and demonstrative exhibit services;
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(vi) Non-party individuals who either are designated in the document or material itself as an author or recipient thereof, or are otherwise shown to have authored or received the designated document or material, provided that the disclosure to such non-parties shall be limited to the specific Confidential Material disclosed in the particular document. Such non-party individuals shall not retain any Confidential Material without the consent of the Producing Party;

(vii) Employee-deponents of the Producing Party, provided that such employees may only be shown documents or material produced by their employer that were created before or during the time of their employment;

(viii) three in-house counsel of each party and one support person (*i.e.*, secretary or paralegal) for each in-house counsel, provided, however, that the three in-house counsel are not involved with the preparation or prosecution of patent applications in the area of antibody manufacture, purification, and formulation (other than involvement in the reexamination proceedings with respect to U.S. Patent No. 6,331,415 (the “415 patent”) and/or any other proceedings with respect to the prosecution of patent applications related to the ‘415 patent) (the “Patent Prosecution Activities”). The identified support staff shall be permitted to use the services of support personnel solely for purposes of completing administrative tasks associated with the Confidential Material, such as copying, scanning and filing. To clarify the meaning of “involved” as used in this Paragraph 7(a)(viii), no party will contend that the in-house counsel designated under this Paragraph 7(a)(viii) (or, if applicable, Paragraph 7(b)) are “involved” in the Patent Prosecution Activities by virtue of

1 their having formal supervisory responsibility over other in-house
 2 counsel or patent agents involved in the Patent Prosecution Activities,
 3 unless the in-house counsel designated under this Paragraph 7(a)(viii)
 4 (or, if applicable, Paragraph 7(b)) in fact exercise that responsibility to
 5 direct the preparation or prosecution of specific patent applications
 6 relating to the Patent Prosecution Activities.

7 (b) In addition to the persons identified in Paragraph 7(a) above,
 8 the following materials may be viewed by Gary Loeb, Genentech's Director of
 9 Litigation and Vice President, Intellectual Property; Daniel Sherman, Genentech
 10 Litigation Support Patent Agent; Gregory Schetina, City of Hope's General
 11 Counsel; Kenneth Dow, Centocor's Vice President, Patent Law; and Philip
 12 Johnson, Johnson & Johnson's Chief IP Counsel, regardless of whether such
 13 materials have been designated Confidential or contain Confidential Material:

14 (i) all motions, memoranda, and briefs filed in this Action,
 15 including all drafts of such motions, memoranda and briefs that a
 16 party intends to file (but not any exhibits thereto that have been
 17 designated Confidential by the Producing Party or that contain the
 18 Producing Party's Confidential Material, absent prior written consent
 19 of the Producing Party).

20 (ii) all expert reports, and all drafts of expert reports that a party
 21 intends to serve, prepared for use in this Action (but not any exhibits
 22 cited in or appended thereto that have been designated Confidential by
 23 the Producing Party or that contain the Producing Party's Confidential
 24 Material, absent prior written consent of the Producing Party)

25 No party shall include Confidential Material in any drafts of motions, memoranda,
 26 briefs, or expert reports without a good faith and reasonable belief that such
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1 material will appear in the final filed or served version, or for the sole purpose of
2 disclosing Confidential Material to the persons designated in this Paragraph 7(b).

3 (c) It is the specific intent of this paragraph that Confidential
4 Material shall not be available to other individuals, including the parties or their
5 employees, except as may be permitted pursuant to Paragraph 8 herein.

6 (d) Nothing in this Protective Order shall bar the persons identified
7 in Paragraph 7(a) from rendering advice to the persons identified in Paragraph 7(b)
8 and, in the course thereof, relying upon their examination of Confidential Material
9 produced or exchanged in this litigation; provided, however, that in rendering such
10 advice and in otherwise communicating with the persons identified in Paragraph
11 7(b) the specific contents of Confidential Material not otherwise identified in
12 Paragraph 7(b) shall not be disclosed. Moreover, nothing contained in Paragraph
13 7(b) shall preclude the persons listed therein from having the same access to
14 Confidential Material as the persons listed in Paragraph 7(a)(viii), so long as the
15 persons designated in Paragraph 7(b) meet the requirements of Paragraph 7(a)(viii)
16 and provide a written statement to the Producing Party to that effect in advance of
17 accessing the Confidential Material.

18 8. In the event that a Receiving Party deems it necessary, in such
19 Receiving Party's good faith and reasonable belief, in connection with this Action
20 to disclose any material of the Producing Party designated Confidential to any
21 person or category of persons not specified in Paragraph 7 herein, the Receiving
22 Party first shall notify the Producing Party in writing of (a) the information or
23 documents desired to be disclosed, (b) the person or category of persons to whom
24 such disclosure is desired to be made, and shall attempt to reach agreement
25 regarding such disclosure. If agreement cannot be reached, the Receiving Party
26 shall move this Court for an order that such person or category of persons may be
27 given access to the Confidential Material, said motion to made in compliance with
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1 Local Rule 37. Until such motion is decided by this Court, no disclosure shall be
2 made. In the event that such motion is granted, such person or category of persons
3 may have access to the Confidential Material provided that before such access is
4 given, such person or persons signs an undertaking to be bound by the terms of this
5 Order in the form of Exhibit A hereto, and a copy is provided to the Producing
6 Party by electronic mail and/or overnight courier.

7 9. In the event that any Receiving Party receives a subpoena or other
8 process or order to produce Confidential Material, such party shall notify the
9 counsel of record of the Producing Party of the document sought by such subpoena
10 or other process or order, shall be notified in writing immediately by electronic
11 mail and/or overnight courier, and in no event more than three (3) business days
12 after the receipt of the subpoena or other compulsory process, and such notification
13 shall include copies of the subpoena or compulsory process. The Receiving Party
14 also must immediately inform the non-party who caused the subpoena or order to
15 issue in the other litigation, in writing by electronic mail and/or overnight courier,
16 that some or all the material covered by the subpoena or order is the subject of this
17 Order. In addition, the Receiving Party must deliver a copy of this Order promptly
18 to the non-party in the other action that caused the subpoena or order to issue, by
19 electronic mail and/or overnight courier. The Producing Party shall have the
20 burden of defending against such subpoena, process, or order, and nothing in these
21 provisions should be construed as authorizing or encouraging a party to this action
22 to disobey a lawful directive from another court.

23 10. A Party's designation of documents as Confidential does not entitle
24 that Party to have those documents filed under seal. Any Party desiring to file with
25 the Court any document containing Confidential Material shall comply with the
26 procedures set forth in Local Rule 79-5 and should seek to file under seal only
27 those portions of the documents that are Confidential.
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1 To facilitate a Receiving Party's compliance with Local Rule 79-5, when a
2 Receiving Party desires to file with the Court a document of the Producing Party
3 that the Producing Party has designated as containing Confidential Material, in
4 advance of any such filing, the Receiving Party shall confer with the Producing
5 Party about the subject documents to determine whether the Producing Party
6 intends to maintain the designation of the subject documents, or any portion
7 thereof, as Confidential. If the Producing Party does intend to maintain the
8 designation of the subject documents, or any portion thereof, as Confidential, the
9 Producing Party shall promptly confirm so in writing in advance of the Receiving
10 Party's filing.

11 To bring the matter promptly to the Court's attention, additional copies of
12 the pleading or paper filed under seal may be submitted to Court in accordance
13 with the procedures set forth in the Judge's Procedures, or Magistrate Judge's
14 Procedures if the matter is referred to the Magistrate Judge. Such additional copies
15 should be placed in a sealed envelope or other appropriate sealed container marked
16 with the title and docket number of this Action, an identification of the nature of
17 the contents of the sealed envelope or container, and a statement substantially in
18 the following form:

19 SUBJECT TO PROTECTIVE ORDER ENTERED IN CASE NO.
20 CV08-3573-MRP (CTx). This envelope, containing documents that
21 are filed in this case by [name of party], is not to be opened nor are
22 the contents thereof to be displayed or revealed except by order of the
23 Court.

24 11. A party may use any material designated as Confidential during
25 depositions, hearings, trial, or other proceedings held in this Action, subject to the
26 access and use limitations in Paragraphs 7 and 8, the rules of evidence, and subject
27 to such further order as this Court may enter.
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1 12. The information produced by the parties or a non-party pursuant to
2 pretrial discovery in this Action may be used and disclosed only for purposes of
3 this Action. No party or person shall make any other use of any such information,
4 including, but not limited to, use for commercial or competitive purposes or use in
5 any other legal proceeding, except as permitted by a court order.

6 13. Drafts of expert reports and notes or outlines for draft reports shall not
7 be discoverable by any party and do not need to be identified on a privilege log.
8 Communications between experts and counsel relating to the preparation of expert
9 reports shall not be discoverable and do not need to be identified on a privilege log,
10 except that any facts and/or documents provided to an expert, whether from
11 counsel or any other source, and the source of those documents and/or information
12 are discoverable. The materials, communications and other information exempt
13 from discovery under the foregoing sentences shall be treated as protected by the
14 attorney-client privilege and/or attorney work product doctrine.

15 14. If, in connection with the pending litigation, the Producing Party
16 inadvertently discloses information subject to a claim of attorney-client privilege
17 or attorney work product protection (“Inadvertently Disclosed Information”), the
18 disclosure of the Inadvertently Disclosed Information shall not constitute or be
19 deemed a waiver or forfeiture of any claim of privilege or work product protection
20 that the Producing Party would otherwise be entitled to assert with respect to the
21 Inadvertently Disclosed Information and its subject matter.

22 (a) If a claim of inadvertent disclosure is made by the Producing Party
23 with respect to Inadvertently Disclosed Information, the Receiving Party
24 shall, within five (5) business days, return or destroy all copies of the
25 Inadvertently Disclosed Information and provide a certification of counsel
26 that all such Inadvertently Disclosed Information has been returned or
27 destroyed.
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1 (b) Within five (5) business days of the notification that such
2 Inadvertently Disclosed Information has been returned or destroyed, the
3 Producing Party shall produce a privilege log with respect to the
4 Inadvertently Disclosed Information.

5 (c) The Receiving Party may move the Court for an Order compelling
6 production of the Inadvertently Disclosed Information, said motion to be
7 made in compliance with Local Rule 37. That motion shall be filed under
8 seal and shall not assert as a ground for entering such an Order either (i) the
9 fact or circumstances of the inadvertent production or (ii) any contents of the
10 Inadvertently Disclosed Information, other than the information provided on
11 a privilege log. The Producing Party retains the burden of establishing the
12 privileged or protected nature of any Inadvertently Disclosed Information.
13 Nothing in this paragraph shall limit the right of any party to petition the
14 Court for an *in camera* review of the Inadvertently Disclosed Information.

15 15. Inadvertent production of information, documents, or other items
16 without marking or otherwise designating such material as Confidential Material
17 does not waive its status as Confidential Material if a written request for
18 reclassification of the material is made promptly after the Producing Party learns of
19 its inadvertent production. Disclosure by the Receiving Party of such material
20 prior to receipt of such notice shall not be deemed a violation of this Order;
21 provided, however, that those persons to whom such disclosure was made shall be
22 advised promptly that the disclosed material is Confidential Material and must be
23 treated in accordance with this Order.

24 16. No copies of Confidential Material shall be made except by or on
25 behalf of attorneys of record in this case or persons otherwise bound by this Order.
26 Any attorneys or other persons bound by this Order who make or cause to be made
27 copies of Confidential Material shall maintain all such copies within their
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1 possession or the possession of others who are entitled to access to such
2 Confidential Material under this Order.

3 17. Nothing in this order shall be deemed to preclude any party from
4 seeking and obtaining modifications of this Order, including, but not limited to,
5 modifications that would provide additional protection with respect to the
6 confidentiality of documents or other discovery materials.

7 18. Nothing herein shall be construed as preventing any party from using
8 or continuing to use any information designated as Confidential if the Receiving
9 Party, its counsel or independent experts or consultants can show that the
10 information: (a) is at the time of disclosure, or thereafter becomes, through no act
11 or omission by the Receiving Party or its employees, a part of the public domain;
12 (b) is subsequently independently developed by the Receiving Party or was in the
13 Receiving Party's lawful possession prior to disclosure; (c) was lawfully obtained
14 from the Producing Party without having been identified as Confidential, except
15 material designated as Confidential in accordance with Paragraph 4; or (d) was
16 lawfully disclosed to the Receiving Party by a non-party that did not acquire the
17 information under an obligation of confidentiality from or through the Producing
18 Party. Should a dispute arise as to any specific information or materials, the
19 burden shall be upon the party claiming that such information or materials is or
20 was publicly known or was lawfully obtained other than through discovery of the
21 Producing Party.

22 19. (a) Nothing herein, nor acceptance by a Receiving Party of
23 Confidential Material shall be construed as an agreement or admission: (1) that any
24 information, document or other items designated as Confidential Material is in fact
25 confidential, trade secret, or competitively-sensitive material; or (ii) with respect to
26 the competency, relevance, admissibility, or materiality of any such information,
27 document, testimony, or tangible object. The parties reserve the right to make any
28

1 and all objections as to the admissibility of the material produced subject to this
2 Order until trial of this case.

3 (b) This Order has been entered to facilitate discovery and
4 presentation of evidence to the Court. Neither the designation of any information,
5 document, testimony or tangible object as Confidential, nor the failure to make
6 such designation, shall constitute evidence with respect to any issue in this Action.

7 20. A party shall not be obligated to challenge the propriety of a
8 Confidential designation at the time made, and a failure to do so shall not preclude
9 a subsequent challenge thereto. In the event that any party disagrees at any point
10 in these proceedings with the designation by the Producing Party of any
11 information as Confidential, the parties shall try first to dispose of such dispute in
12 good faith on an informal basis. If the dispute cannot be resolved, the Receiving
13 Party shall inform the Producing Party in writing that the material should not be
14 deemed confidential and shall cite this paragraph. The party objecting to the
15 “Confidential” status of a document must present a motion in compliance with
16 Local Rule 37 to the Court objecting to such status. On any such motion, the
17 proponent of the “Confidential” or designation shall bear the burden of proof. The
18 document shall continue to have such status unless and until its status is changed
19 by a ruling of the Court or agreement of the parties.

20 21. Within sixty (60) calendar days after the conclusion of this Action, all
21 documents, objects, and other materials produced or designated as Confidential,
22 and all reproductions thereof, shall at the option of the Producing Party, be
23 destroyed or returned to the Producing Party, with the exceptions that (a) outside
24 counsel and the three designated in-house counsel for the Receiving Party may
25 keep one copy for a complete pleadings and correspondence file, (b) outside
26 counsel and the three designated in-house counsel may maintain in their files all
27 materials submitted or otherwise presented to the Court, deposition and trial
28

1 transcripts, and work product (regardless of whether such materials contain or refer
2 to Confidential Material). If the Producing Party directs the Receiving Party to
3 destroy such Confidential Material, then the Receiving Party, within ten (10)
4 business days of destroying such material, must certify in writing that it has
5 destroyed such material, and serve said certification upon the Producing Party by
6 electronic mail and/or overnight courier. If the Producing Party directs the
7 Receiving Party to return Confidential Material, the Producing Party shall
8 reimburse the Receiving Party for any packing and shipping charges.

9 22. Insofar as the provisions of this and any other Protective Orders
10 entered in this Action restrict the communication and use of information produced
11 thereunder, such Orders shall continue to be binding after the conclusion of this
12 Action except (a) that there shall be no restrictions on documents that are used as
13 exhibits in Court (unless such exhibits were filed under seal); and (b) that a party
14 may seek the written permission of the Producing Party or further order of the
15 Court with respect to dissolution or modification of any such Protective Orders.

16 23. Nothing in this Order shall in any way affect or restrict the right of the
17 Producing Party to disclose or use for any purpose the information, documents, or
18 other items produced and/or designated by it as Confidential Material.

19 24. The terms of this Order shall apply to confidential documents or
20 material produced or disclosed by non-parties in connection with this Action if
21 such non-party designates the document or information protected information
22 pursuant to this Order.

23 25. This Order shall not prevent any party from applying to the Court for
24 a further order of injunctive or other relief, and shall not preclude any party from
25 enforcing its rights at law or in equity with respect to any information, document,
26 or thing against any other person, including another party, believed to be violating
27 the rights of any party.
28

1 The foregoing is hereby stipulated by and between counsel.

2
3 Respectfully submitted,

4 Dated: October 9, 2009

KIRKLAND & ELLIS LLP

5 By: /s/ Marcus E. Sernel

6 Marcus E. Sernel

7 Attorneys for Defendant

Genentech, Inc.

8 Dated: October 9, 2009

DURIE TANGRI LEMLEY

9 ROBERTS & KENT LLP

10 By: /s/ Daralyn J. Durie

11 Daralyn J. Durie

12 Attorneys for Defendant

Genentech, Inc.

13 Dated: October 9, 2009

IRELL & MANELLA, LLP

14 By: /s/ Joseph M. Lipner

15 Joseph M. Lipner

16 Attorneys for Defendant

17 City of Hope

18 Dated: October 9, 2009

WOODCOCK WASHBURN LLP

19 By: /s/ Aleksander J. Goranin

20 Aleksander J. Goranin

21 Attorneys for Plaintiff

22 Centocor Ortho Biotech, Inc. and

Third-Party Defendants

23 Dated: October 9, 2009

CONNOLLY BOVE LODGE & HUTZ

24 LLP

25 By: /s/ Bruce G. Chapman

26 Bruce G. Chapman

27 Attorneys for Plaintiff

28 Centocor Ortho Biotech, Inc. and

Third-Party Defendants

IT IS SO ORDERED

DATED this 20 day of OCTOBER, 2009

By: Mariana R. Pfaltz

EXHIBIT A

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

CENTOCOR ORTHO BIOTECH, INC.,)

Plaintiff,)

v.)

GENENTECH, INC. AND CITY OF)
HOPE,)

Defendants.)

Case No. CV 08-03573 MRP (CTx)

UNDERTAKING OF _____

I, _____, state that:

1. My address is _____.

2. My present employer is _____, and
the address of my present employment is _____.

3. My present job or occupation is: _____.

4. I have no prior or current affiliation with the parties to this Action, OR
[explain any prior or current affiliation other than expert consultation in connection
with this litigation] _____.

5. I have carefully read and understand the attached Stipulated Protective Order
(the "Order") which has been entered by the United States District Court for the
Central District of California in an action captioned *Centocor Ortho Biotech, Inc.,
v. Genentech, Inc., et al.*, Case No. CV08-3573 MRP (CTx). The initially
capitalized terms in this Undertaking shall have the meanings supplied in the
Order.

6. Pursuant to the Order, I may be given access to Confidential Material in the
above-referenced action. As a condition of access to that Confidential Material,
and in consideration of that access, (a) I agree that I shall be bound by and comply

1 with all the terms of the Order, including those limiting disclosure and use of
2 Confidential Material, (b) I agree that I shall list any Confidential Material that is
3 disclosed to me only for purposes of this action, and (c) I agree that I shall return
4 all such material that comes into my possession to counsel for the party by whom I
5 am retained.

6 7. I submit to the jurisdiction of the United States District Court for the Central
7 District of California for the enforcement of the Order.

8 8. By reason of this Undertaking, the obligations imposed on me by the Order
9 shall be enforceable by the Producing Party to redress any breach of the Order or
10 this Undertaking.

11 9. I have executed this Undertaking in duplicate on _____
12 whereupon it becomes binding in accordance with its terms.

13 I declare under penalty of perjury under the laws of the United States of America
14 that the foregoing is true and correct.

15 Executed this ____ day of _____, 20__ in _____.

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